

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RODNEY DERRICKSON

v.

GEORGE HILL,
DELAWARE COUNTY PRISON,
DELAWARE COUNTY BOARD OF
PRISON INSPECTORS, and
JAMIE C. CAMPBELL

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CIVIL ACTION
NO. 97-5484

O'NEILL, J.

April , 2000

MEMORANDUM

Plaintiff Rodney Derrickson filed this civil rights action pursuant to 42 U.S.C. § 1983 against Corrections Officer Jamie C. Campbell, Delaware County Prison, its warden George Hill, and the Delaware County Board of Prison Inspectors.¹ Plaintiff alleges that Campbell opened the door to plaintiff's cell so that another inmate could assault him. Immediately after this assault, while plaintiff and his assailant were being separated, Campbell allegedly struck plaintiff in the face without cause or justification. In addition, plaintiff alleges that defendants Hill, the Delaware County Prison, and Delaware County Board of Prison Inspectors failed to protect him by reason of a custom or policy which promoted or permitted the use of excessive force against inmates. The complaint asserts claims against defendants for violations of plaintiff's right to be free from the use of excessive force under the Eighth Amendment and made applicable to the

¹ Defendants have asserted that Delaware County Prison is merely a "geographic location" and not a legal entity amenable to suit. The capacity of an entity to be sued in federal court is a matter of state law. See Fed. R. Civ. P. 17(b). Though defendants cite to a state court case holding that the management and control of the Delaware County Prison is vested in the Board of Prison Inspectors, they have not cited any authority holding that under Pennsylvania law a county prison lacks the capacity to sue or be sued. See Lewis v. Delaware County, 1996 WL 665529 at *1 (E.D.Pa. 1996) (denying motion to dismiss where movant failed to provide court with authority regarding whether under Pennsylvania law prisons have capacity to be sued).

states under the Fourteenth Amendment. Presently before me is a motion for summary judgment filed by defendants Hill, Delaware County Prison and Delaware County Board of Prison Inspectors.²

In considering a motion for summary judgment, a court must consider whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The court must determine whether the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, all of the facts and all reasonable inferences drawn therefrom must be viewed in the light most favorable to the non-moving party. Id. at 256. Once the moving party has met the initial burden of demonstrating the absence of a genuine issue of material fact, the non-moving party "must establish the existence of each element on which it bears the burden of proof." J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir.1990), citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

Respondeat superior is not a basis for liability under §1983. Urrutia v. Harrisburg County Police Department, 91 F.3d 451, 453 (3d Cir. 1996). Accordingly, the mere fact that defendant Hill holds a supervisory position – that he was the warden at the time of the alleged assault – is insufficient to establish liability. See Fagan v. City of Vineland, 22 F. 3d 1283, 1291

²Based on defendants' submissions, it is unclear whether defendant Campbell intended to join this motion for summary judgment. However, as none of the arguments made in the motion pertain to Campbell's liability and the form order does not request judgment in favor of Campbell, I will treat the motion as pertaining only to Hill, Delaware County Prison and the Delaware County Board of Prison Inspectors.

(3d Cir. 1994). Defendant Hill can be held liable under §1983 only if it is shown that he was "personally involved" in the alleged violations of plaintiff's rights. See Johnson v. Miller, 925 F.Supp. 334, 341 (E.D.Pa. 1996). To establish personal involvement, plaintiff must show that Hill was either directly involved with, had knowledge of, or acquiesced in the alleged violations. See Hill v. Blum, 916 F.Supp. 470 (E.D.Pa. 1996).³

Plaintiff alleges that defendant Hill knew or should have known of the unconstitutional practices of his prison guards and that if he did not his ignorance was the result of willful blindness. See Beck v. City of Pittsburgh, 89 F.3d 966, 973 (3d Cir. 1996) (holding that existence of prior complaints of officer's use of excessive force allowed a jury to infer that the chief of police knew or should have known of officer's violent tendencies). Defendant Hill was aware of several complaints of excessive force filed by inmates against the Special Response Team Unit, of which defendant Campbell was a member.⁴ As warden, defendant Hill was also aware of an ongoing FBI investigation into those complaints. Plaintiff alleges that despite this knowledge of a pattern of use of excessive force defendant Hill took no action to prevent a continuation of those abuses until January, 1997, long after the incident in question. Plaintiff alleges that defendant Hill's failure to address such practices constitutes his acquiescence.

³Defendants incorrectly assert that to establish liability against defendant Hill for the alleged violation of plaintiff's rights it must also be shown that he had a "sufficiently culpable state of mind," which defendants define as one of "deliberate indifference" to inmate health or safety. While this is the standard for claims challenging conditions of confinement, "the application of the deliberate indifference standard is inappropriate in a claim of excessive force." Farmer v. Brennan, 511 U.S. 825, 835-836 (1994); see also, Hudson v. McMillian, 503 U.S. 1, 6-7 (1992); Whitley v. Albers, 475 U.S. 312, 320 (1986).

⁴ At least ten inmates filed complaints against the SRT unit for use of excessive force from 1994-1995. Four of the complaints alleged that defendant Campbell used excessive force against inmates.

A governmental entity is liable under §1983 when the “execution of a policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.” Monell v. Department of Soc. Servs., 436 U.S. 658, 694 (1978). Thus, defendants Delaware County Prison and Delaware County Board of Prison Inspectors can be held liable under §1983 only if plaintiff can: (1) establish the existence of an official policy or custom and (2) demonstrate a causal link between the policy or custom and the alleged deprivations of plaintiff’s rights. Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 1990). To establish the necessary causation, a plaintiff must demonstrate a "plausible nexus" or "affirmative link" between the custom and the specific deprivation of his rights. Id. "As long as the causal link is not too tenuous, the question whether the municipal policy or custom proximately caused the constitutional infringement should be left to the jury.” Id. at 851.

Plaintiff alleges that the pattern of abuses by the SRT unit and the acquiescence of defendant Hill established a course of conduct and thus an “official” custom. "A course of conduct is considered to be a 'custom' when, though not authorized by law, 'such practices of state officials are so permanent and well-settled' as to virtually constitute law." Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990), quoting Monell, 436 U.S. at 690. To show an actionable "custom," plaintiff must show that an official who has the power to make policy has acquiesced in a well-established course of conduct. Bielevicz, 915 F.2d at 850. " Under § 1983, only the conduct of those officials whose decisions constrain the discretion of subordinates constitutes the acts of the municipality." Id., quoting City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988). Defendant Hill is the warden of the prison and a reasonable jury could find that he had the ability to constrain the discretion of his subordinates, and therefore is an official with

policy making power for the municipality.

Plaintiff has presented sufficient evidence from which a reasonable jury could infer that Hill, Delaware County Prison and the Delaware County Board of Prison Inspectors had knowledge of a course of conduct whereby corrections officers used excessive force against inmates and acquiesced in a custom of tolerating that course of conduct. A reasonable jury could also conclude that this tacitly adopted custom was a substantial factor in causing the alleged violation of plaintiff's constitutional rights. Accordingly, summary judgment in favor of the defendants should not be granted.

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ORDER

AND NOW this day of April, 2000, upon consideration of Defendants' Motion
for Summary Judgment, and Plaintiff's response thereto, it is hereby ORDERED that said motion
is DENIED.

THOMAS N. O'NEILL, JR. J.